National Grocers Association

February 2, 2005

Country of Origin Labeling Program
Agricultural Marketing Service (AMS)
Room 2092-S
USDA STOP 0249
1400 Independence Avenue, SW
Washington, DC 20250-0249

Desk Officer for Agriculture
Office of information and
Regulatory Affairs
Office of Management and Budget
New Executive Office Building
725 17th St, NW, Room 725
Washington, D.C. 20503

RE: Mandatory Country of Origin Labeling of Fish and Shellfish Interim Final Rule; 69 Fed. Reg. 59708, October 5, 2004.

Docket No. LS-03-04

Dear Sir or Madam:

The National Grocers Association (N.G.A.) welcomes this opportunity to comment on the excessive and unnecessary information collection and recordkeeping requirements of the United States Department of Agriculture (USDA) Agricultural Marketing Service's (AMS) interim final rule (IFR) for the mandatory country of origin labeling (COL) of fish and shellfish under the Agricultural Marketing Act of 1946 (Act).

N.G.A. is the national trade association that represents exclusively the interests of independent community-focused grocery retailers and wholesalers. An independent, community-focused retailer is a privately owned or controlled food retail company operating in a variety of formats. Most independent operators are serviced by wholesale distributors, while others may be partially or fully self-distributing. A few are publicly traded, but with controlling shares held by the family and others are employee owned. Independents are the true "entrepreneurs" of the grocery industry and dedicated to their customers, associates, and communities.

Momentum to repeal the current law for all covered commodities (including fish and shellfish) is growing as producers, processors, wholesalers and retailers have educated members of Congress that the law and its costly mandates are a mistake. The House Agriculture Committee in 2004 approved legislation to that end. Representative Bob Goodlatte, Chairman of the House Agriculture

Committee, is reported to have announced that he will again introduce legislation to repeal the law and replace it with a voluntary program. N.G.A. strongly supports that objective. USDA should endorse it.

However, N.G.A.'s comments here address and recommend ways for the USDA to reduce the costs and burdens of the recordkeeping and tracking requirements imposed by the IFR on retailers, wholesalers, suppliers and ultimately consumers. These comments do not lessen N.G.A.'s strong support for repeal of mandatory country of origin labeling. In fact, the record on the unnecessary regulatory and recordkeeping burdens is substantial. During the past two years, N.G.A. and almost all of the industry segments filed comments on the adverse effects of the law, recordkeeping requirements, the interim voluntary guidelines, the proposed rule and now the IFR, plus presented testimony at USDA listening sessions and Congressional hearings.

## Summary of Recommendations

N.G.A. recommends four major changes to the regulation:

1. The timeline for compliance should be delayed to be consistent with uniform effective dates for labeling changes by USDA and the Food and Drug Administration (FDA), namely until January 1, 2008.

2. USDA should require the original suppliers of farm raised and wild fish and shellfish to substantiate and provide in a retail-ready format the country of origin and method of production (MOP) by use of pre-labeled product itself or labels on the master shipping containers that accompany the product through to retail sale, all of which shall include the lot number or other unique identifier (if that information is also required by USDA).

3. USDA should eliminate the tracking and recordkeeping requirements by lot number or other unique identifier for wholesalers. The current FDA regulations already establish a verifiable chain of custody for wholesalers to maintain information on the immediate previous supplier and subsequent customer. The originator of the country of origin and MOP must provide the required information in a retail-ready format in order for retailers to communicate it to consumers. Wholesalers do nothing more than pass through the product and labeling information on fish to retailers, as they do on a can of beans.

4. USDA should only require retailers to maintain the country of origin and MOP information, and if USDA deems it necessary—a lot number—for as long as the product is on hand. Consumers make their purchasing decision at the point of sale, and it is only to that extent the country of origin and MOP marketing information is relevant. The same holds true for lot number information if USDA were to require it at retail. However, the information that retailers must

maintain for establishing the chain of custody from the previous supplier under the FDA regulations should suffice for USDA in order to identify the original supplier.

## Mandatory Labeling of Fish and Shellfish Should Be Delayed

As these comments are being delivered to USDA, it is already February, 2005. The effective date of the IFR is April 4, 2005. USDA has not indicated when a final rule will be issued. When USDA issues a final rule, the industry must evaluate and make any changes to its recordkeeping systems to be in compliance. The industry must be given adequate time to comply. One leading wholesaler, like many N.G.A. members, has indicated it will take many months to do the required analysis and to change processes and computer systems to comply with the recordkeeping burden imposed by the IFR. Another wholesaler reports the changes in technologies and reporting mechanisms at the wholesale level would initially cost it in the hundreds of thousands of dollars and thousands of dollars annually thereafter, not including the collective costs of their retail customers. It is unreasonable to expect businesses will make costly system investments before the details of the final rule are known.

The regulatory burdens and costs for compliance are substantial and will fall disproportionately on retailers and wholesalers, regardless of whether records are kept electronically or manually. Clearly, USDA should exercise its discretion under the statute and give the industry a more reasonable timetable for compliance. USDA should use its enforcement discretion and delay the effective date because of the clear uncertainty which exists regarding the recordkeeping and information tracking requirements and provide the industry adequate notice and time to comply. Members of Congress also are recognizing the need for delay. As a result, USDA should delay enforcement.

The IFR effective date should be consistent with USDA Food Safety and Inspection Service (FSIS) which has established January 1, 2008, as the uniform compliance date for new food labeling regulations that are issued between January 1, 2005 and December 31, 2006. (69 Fed. Reg. 74405, December 14, 2004). FSIS established a uniform compliance date to minimize the economic impact of labeling changes by providing for an orderly industry adjustment to new labeling requirements that occur between the designated dates. FSIS stated that establishing such a policy serves the consumers' interests because the cost of multiple short-term label revisions that would otherwise occur would likely be passed on to consumers in the form of higher prices. FSIS also established the uniform compliance date to be consistent with the approach that the FDA has already established. AMS should follow the lead of FSIS and do the same.

## Recordkeeping Provisions in the IFR are Unnecessarily Complex and Should Require Substantiation of COL Information at the Supplier Level

N.G.A. feels strongly that USDA is attempting to develop and implement a far more complex recordkeeping and trace-back system than is necessary. Congress did not require the Secretary of Agriculture (Secretary) to issue new regulations. Instead, Congress, as evidenced by the legislative history, wanted to make compliance simple. Congress instructed the Secretary to provide consumers with accurate COL information.

As the ultimate goal of the IFR is to provide consumers with accurate information at the time of purchase, it follows that the records should be maintained at the point closest to the harvest which is traceable up the chain of custody from the retailer.

USDA should require the original suppliers (*i.e. harvesters, producers*) of farm raised and wild-caught fish and shellfish to substantiate the country of origin and MOP by use of pre-labeled product itself or labels on master shipping containers that accompany the product through to retail sale, all of which shall include the lot number or other unique identifier (if USDA were to require use of lot numbers).

In the interest of transmitting the most accurate information to the consumer, it would be logical for USDA to require that products be pre-labeled, or have a retail-ready label on the master shipping container or retail-ready placards, labels or pin-tags be included in the package of any covered seafood product leaving an original supplier. One example would be to have a placard placed in the box with the covered commodity. For instance an employee at a plant preparing raw fish for sale, boxing up a package of farm-raised salmon harvested in Maine would be required to label the master shipping container or include inside the box, a placard suitable for display in a retail seafood case stating “Product of U.S.” and “Farm-Raised.”

## Interim Final Rule on Seafood Imposes New Unfeasible and Unnecessary Recordkeeping Requirements on Retailers and Wholesalers

The IFR issued by USDA imposes unfeasible recordkeeping requirements by mandating that retailers and wholesalers identify and track millions of transactions by lot number. USDA does not need to have a lot number to establish a product’s chain of custody back to the original supplier that is responsible for verifying and substantiating the claim. In the interest of having accurate country of origin and MOP information, the recordkeeping requirements should be imposed most strictly at the source of the original designations. Ideally, that source should provide such information in a retail-ready format.

### A. Wholesalers

The IFR requires that: "Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction by means **of a lot number or other unique identifier**, for a period of 1 year from the date of the transaction." §60.400(b)(3).

N.G.A.'s wholesale membership does not segregate or track product by lot number in the ordinary course of business. The recordkeeping and tracking requirements will impose a very significant cost on wholesalers by requiring them amass and track enormous quantities of data they currently do not in the ordinary course of their business activities. The food industry established the impossibility and enormity of such a task when the FDA proposed the bioterrorism recordkeeping regulations. **USDA's IFR will impose an unnecessary burden—by requiring the industry to invest millions of dollars in inventory tracking systems—that was resoundingly rejected by FDA in the final regulations.**

For example, a seafood producer may ship a product on a common or private carrier to the wholesaler, which then warehouses the product, fulfills individual retail orders, and ships it on his or her own trucks to retail customers. The wholesaler will mix numerous seafood products into a retailer's order (picking and re-palletizing the orders) and often deliver orders to more than one retailer on a truckload. It is also possible for the wholesaler to use its trucks for pick-up of seafood products from the producer and backhaul the product to the wholesaler's warehouse, or deliver it directly to a retailer's operation, or the retailer may have trucks that also pick up directly from the wholesaler. Another scenario is that direct store deliveries are made to the retailer by seafood producers. Finally, retailers may acquire seafood directly from aquaculture farms. Under each of these scenarios, where a wholesaler is an intermediary supplier, the wholesaler under the IFR would be required to maintain records that contain the lot number or other unique identifier for each product for one year from the date of the transaction.

The IFR will build a maze of recordkeeping, designed to track millions of transactions. One wholesaler alone reports that it receives over 17,000 cases of seafood a week from five different suppliers and carries approximately 200 different seafood products. The IFR will affect their operational procedures, not just recordkeeping since lot numbers are not recorded as they are shipped through the food system.

As intermediary suppliers play a critical role in the chain of custody, they can handle and distribute packages with the country of origin and MOP information

either on the product itself, on the master shipping container, or in a document that accompanies the product through retail sale, **but not by means of a lot number.**

### B. Retailers

The IFR mandates that retailers must maintain records that identify the retail supplier, the product unique to that transaction by means **of a lot number or other unique identifier**, and for products that are not pre-labeled, the country of origin information and the method(s) of production. These records must be maintained for a period of one year from the date the declaration is made at retail.

In the normal course of business, N.G.A.'s retail membership does not segregate and track product by lot number. The inconsistent recordkeeping and tracking requirements that USDA imposes compared to FDA inflicts disproportionate regulatory burdens on retailers by requiring them to fundamentally alter the way they conduct business. It will impose an unnecessary burden on them by requiring them to invest millions of dollars in inventory tracking and archiving records as well as devote more compensable time to recordkeeping or hire additional employees.

## USDA Should Lessen the Regulatory Burden by Exercising Reasonable Authority Based Upon Current Industry Practices

N.G.A. feels it is important to examine the language and the goals of the Public Law 107-171. Section 282 of P.L. 107-171 states: "The Secretary may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance. . ."

When the above language is viewed in the context of the legislative intent it is apparent that Congress granted the Secretary rational discretionary authority to assure compliance with the general intent of the provision—providing accurate country of origin and MOP information to consumers. All Congress had in mind was for USDA to use rational discretion based on information systems already in place, not some new system based upon lot numbers, or other unique identifiers. Congress did not intend to require that retailers and wholesalers track lot numbers.

N.G.A. strongly believes that the law has given the Secretary discretionary authority, and does not expressly require the Secretary to issue a regulation requiring the maintenance of additional records. Clearly, the industry can currently make voluntary country of origin claims and no additional recordkeeping is required, **especially by lot number**. Before USDA undertakes

a broad new mandate that would apply to all unprocessed fresh and frozen seafood destined for consumption in the United States, N.G.A. believes that USDA should look more closely at the industry and the chain of custody already in place. The industry already maintains records that are more than sufficient for USDA to enforce this law. USDA is going beyond what is necessary to ensure that consumers receive accurate country of origin information at point of sale by not only requiring that retailers and wholesalers maintain new lot number data, but also that they retain it for one year after the product is sold and consumed. The one year retention period is inconsistent with the purpose of the regulation as a USDA inspector can only judge compliance based upon what information suppliers have provided to retailers which is on display in the store.

## USDA Recordkeeping Should be Consistent with FDA

The alleged purpose of the mandatory COL program is to provide accurate country of origin information to consumers.

A program of food recordkeeping in which precision and accuracy are of the utmost importance is reflected in the FDA bioterrorism regulations. 21 C.F.R. pt. 1 & 11 (2004). (Bioterrorism Regulations).

There is no other situation where the maintenance of accurate and quickly accessible chain of custody information is as critical as in the event of a terrorist attack upon our food supply.

The Bioterrorism Regulations mandate that strict records be kept on fish and shellfish, among other food items. USDA should engineer seafood COL recordkeeping requirements along these lines.

The Bioterrorism Regulations mandate that retailers and wholesalers must retain records that:

"(1) Identify the immediate previous sources, whether foreign or domestic, including the name of the firm; address; telephone number; fax number and e-mail address, if available; type of food, including brand name and specific variety; date received; quantity and type of packaging; and identify the immediate transporter previous sources including the name, address, telephone number—and, if available, fax number and e-mail address.

(2) Identify the immediate non-transporter subsequent recipients of all foods released, including the name of the firm; address; telephone number; fax number and e-mail address if available; type of food, including brand name and specific variety; date released; quantity and type of packaging; and identify the immediate transporter subsequent recipients, including the name, address, telephone number—and if available, fax number and e-mail address."

**FDA evaluated the usefulness of tracking lot numbers in formulating their regulation and specifically rejected them.** FDA determined that a more desirable method of tracking the chain of custody was through the records maintained by the industry in the ordinary course of business. Certainly, the stated purpose of providing consumers with accurate country of origin and MOP information about their seafood should not require a more onerous recordkeeping obligation than that implemented to protect the very lives of Americans from a terrorist attack upon our food supply.

## The One Year Recordkeeping Requirement is Unnecessary: USDA Should Only Require Retailers to Maintain COL Information So Long as Product on Hand

Requiring retailers to maintain records for a period of one year from the date the country of origin and MOP information is made at retail is excessive. First, seafood products are very perishable. The FDA bioterrorism regulations acknowledge such a distinction among food products and reduce the recordkeeping requirements accordingly. Second, the purpose of providing the consumer with accurate country of origin and MOP information at the point of sale is not further served by mandating that retailers maintain such records. After a product has left a retail store, all that would be necessary for USDA to determine the accuracy of the COL declaration are business records that permit the Agency to trace the chain of custody back to the producer or harvester who initiated the designation. This rationale applies similarly for wholesalers.

**If USDA fails to eliminate the lot number tracking requirement, an entirely new recordkeeping system must be developed to comply with the mandate and that system will have to originate with the fisherman and processors who are the source for verifying the country of origin and MOP.**

N.G.A.'s wholesalers have confirmed that the lot or code number or other identifier of the food traditionally has not been recorded or maintained at the wholesale and retail levels. This is particularly true at the wholesale and retail level because manufacturers may have commingled hundreds of cases of various PLUs with different lot numbers on truckloads that are then broken up into individual orders to retailers. Records of the lot numbers are not tracked. To accommodate that information would be very costly, and would seriously impact the technological investments, as well as the logistics and business processes required by manufacturers, wholesalers and retailers.

For instance, one member illustrates how current records identify the immediate previous source and immediate subsequent recipient of a product by maintaining purchase records and sales records in the following way:

"Purchase Records: Receipts of product into XXXX distribution centers are assigned location identifiers (license plates) by pallet by our Warehouse Management System. These identifiers are associated with a corresponding purchase order at time of receipt of the product.

The relationship of license plates to purchase orders diminishes at the point that product is let down from reserve into the pick slot and commingled with product in the pick slot.

An individual product lot generally cannot be tied to a specific purchase order. Rather, an item or lot can be tied by XXXX item number and UPC number to more than one possible purchase order that could represent its purchase and immediate previous source. The Warehouse Management System's FIFO logic, in many cases, allows the ability to tie a specific lot to no more than a couple of purchase orders, which will likely reflect the same source.

Sales Records: Food product sold by and shipped from the wholesale distribution centers is associated to billing data (invoices) by XXXX item number and UPC number. Record of the immediate subsequent recipient (customer) is associated with this billing data (invoice).

In that the purchase orders of multiple XXXX customers are filled from a given warehouse pick slot, a product lot cannot generally be associated with a specific invoice, but only to a number of invoices, associated with multiple customers."

Industry systems are not in place to capture the lot numbers in an economically feasible way. As a result, USDA has substantially underestimated the costs and burdens which will be imposed in revising current recordkeeping requirements in order to assure compliance. It also appears that USDA would require the duplication of effort, since all parties would have to track information and keep the records for 1 year throughout the change of custody. For example, if a manufacturer ships to a wholesaler, then the wholesaler also has to keep track of the same information as the manufacturer. And if the wholesaler then ships to the retailer, it must provide the documentation to its retailer and the retailer also has to keep that same information that its wholesaler had shipped to it. **This is an unnecessary capture of lot number or other unique identifier information.** If the receiver knows whom they received the product from, USDA ought to be able to rely upon the chain of custody, (e.g. either from the retailer, wholesaler or the manufacturer) to receive documentation of who is responsible for the shipment.

## Proposed Rule Underestimates the Unnecessary and Costly Burdens of the Law

For the first time the industry will be required to create labeling and an information tracking system on country of origin and MOP from supplier to consumer. While the retailers have the burden to provide the information to consumers, USDA has correctly made clear that the original suppliers "are required to provide information to retailers indicating the country of origin of the covered commodity."

The IFR requires that retailers must have records that identify their supplier, the product unique to the transaction, and country of origin and MOP information for a period of one year from the date the origin declaration is made at retail. Such records may be located at the retailer's point of distribution, warehouse, central offices, or other off-site location. The magnitude of the paperwork involved in generating, maintaining and storing the voluminous amount of records required for one year is a nightmare for retailers and the industry. Retailers and wholesalers have not had to maintain the records for country of origin or MOP information. This is a new recordkeeping requirement.

Retailers will have to track country of origin and MOP information from the time the product is delivered to the back room until displayed and sold to consumers in the store's individual departments. After the product is sold the information must be kept for a year after the designation is made at retail. Retail stores receive product two, three, or more times per week.

USDA assumes that the recordkeeping for retailers and others will be accomplished primarily by electronic means. Even if such recordkeeping is done electronically, imposition of the lot number tracking requirement will demand that retailers and wholesalers get new computer systems for tracking the information which will be at a very significant cost. Furthermore, for retailers who are using manual recordkeeping, the costs will be much greater.

USDA has estimated only 52 hours, or one hour per week for wholesalers, when countless shipments of seafood are coming in and going out of the warehouse every day. To track the COL information will take far more than an hour a day by one clerical individual, let alone a week. USDA estimates at the retail level only one hour per day will be consumed to maintain the records for the numerous covered seafood products in the store as well as to archive them in a central location for one year. At the store level this will certainly involve salaried professional department mangers and store managers that are compensated above any additional clerical staff. The one year recordkeeping requirement will further increase the amount of time devoted to compliance by requiring the creation and maintenance of a database of COL information.

Clearly, the USDA estimate of one hour per day for retailers to generate and maintain the required records is wholly inadequate. It will take substantially more hours.

## N.G.A. Supports IFR Clarification of "Processed Foods" Definition and Indemnification Provisions

N.G.A. supports the USDA clarification of the definition of "processed foods" in the IFR [Section 60.119] to include cooked, cured, smoked and restructured foods as well as combination of commodities and substantive foods and canned items.

N.G.A. also supports the provisions of the recordkeeping requirements [Sections 60.400 (b) (2) and (c) (3)] that shield suppliers and retailers from mislabeling liability for violation of the Act by reason of the conduct of another when they could not be reasonably expected to have knowledge of the violation from the information provided by the previous supplier. This provision properly protects retailers and wholesalers from being cited for unknowing violations.

## Labor Costs Underestimated

Seafood departments, like meat, are important customer service departments that offer nutritious perishable products that require trained employees to staff and serve customer needs. Employees go through training to assure proper handling and preparation of hundreds of covered products. As a result, seafood department employees have higher labor costs, and mandatory country of origin labeling will require more paperwork for recordkeeping and labeling product. This will add significant labor costs to comply beyond the one hour per day estimated by USDA. In addition, retailers and wholesalers are likely to source from a narrower group of suppliers. The complexity and costs of the recordkeeping procedures will unfortunately result in retailers reducing the number and variety of seafood suppliers. Ultimately, this will lead result to a reduction in the number and variety of suppliers. In the end, this will negatively affect the consumer and the seafood industry as a whole.

In response to the comments regarding the assumed administrative hourly rate of $16.05 being insufficient in ignoring the supervisory, professional, and management time required at the wholesale and retail level to contend with the regulation, USDA stated: "While the Agency acknowledges that supervisory and management input will be required, the Agency also notes that some labor will be supplied by workers receiving lower wages. In some of our visits to retailers, it was indicated that these firms were employing more high school and college students than in the past to reduce their costs." This statement is not true with respect to seafood departments which require vastly more training. It is not an

ordinary business practice to employ a teenager behind a seafood counter or in a seafood department. In fact Department of Labor rules prohibit teens from doing the some of the most common tasks in a fresh seafood department (e.g. cutting filets, cleaning shellfish).

## Rule Language Recommendations

N.G.A. recommends the following changes to the language of the mandatory COL for fish and shellfish regulation:

Sec. 60.400 Recordkeeping requirements.

(a) General.

(1) All records must be legible and may be maintained in either electronic or hard copy formats. Due to the variation in inventory and accounting documentary systems, various forms of documentation and records will be acceptable.

(2) Upon request by USDA representatives, suppliers and retailers subject to this subpart shall make available to USDA representatives, records and other documentary evidence that will permit substantiation of an origin claim and method(s) of production (wild and/or farm-raised), in a timely manner during normal hours of business and at a location that is reasonable in consideration of the products and firm under review.

(b) Responsibilities of Suppliers.

(1) Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, **and that is responsible for initiating the country of origin declaration and the designation of the method(s) of production (wild and/or farm-raised),** must make available information to the buyer about the country(ies) of origin and method(s) of production (wild and/or farm raised), of the covered commodity. This **retail-ready** information ~~may~~ **must** be provided either on the product itself~~,~~ **or** on **a label on** the master shipping container~~, or in a document~~ that accompanies the product through retail sale provided that it identifies the product and its country(ies) of origin and method(s) of production, unique to that transaction by means of a lot number or other unique identifier. In addition, the supplier of a covered commodity that is responsible for initiating a country(ies) of origin and method(s) of production (wild and/or farm-raised) claim must possess records that are necessary to substantiate that claim.

(2) Any intermediary supplier (i.e., not the supplier responsible for initiating a country of origin declaration and designation of wild and/or farm-raised) handling a covered commodity that is found to be designated incorrectly for country of origin and/or method of production (wild and/or farm-raised), shall not be held liable for a

violation of the Act by reason of the conduct of another if the intermediary supplier could not have been reasonably expected to have had knowledge of the violation.

(3) Any ~~person~~ **intermediary supplier** engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly (i.e., including but not limited to harvesters, producers, distributors, handlers, and processors), must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity~~, in such a way that identifies the product unique to that transaction by means of a lot number or other unique identifier, for a period of 1 year from the date of the transaction~~.

(4) For an imported covered commodity (as defined in Sec. 60.200(f)), the importer of record as determined by U.S. Customs and Border Protection, must ensure that records: Provide clear product tracking from the port of entry into the United States to the immediate subsequent recipient and accurately reflect the country of origin and method of production (wild and/or farm-raised) of the item as identified in relevant CBP entry documents and information systems; and must maintain such records for a period of 1 year from the date of the transaction.

(c) Responsibilities of Retailers.

(1) Records and other documentary evidence relied upon at the point of sale to establish a covered commodity's country(ies) of origin and designation of wild and/or farm-raised, must be available during normal business hours to any duly authorized representative of USDA at the facility for as long as the product is on hand. For pre-labeled products or products with labels on the master shipping container, the label itself is sufficient evidence on which the retailer may rely to establish the product's origin and method(s) of production (wild and/or farm-raised).

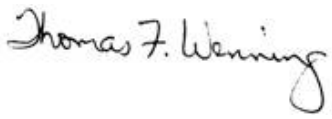
(2) Records that identify the retail supplier~~, the product unique to that transaction by means of a lot number or other unique identifier, and for products that are not pre-labeled~~ and the country of origin information and the method(s) of production (wild and/or farm-raised) must be maintained ~~for a period of 1 year from the date the declaration is made at retail.~~ **for so long as the product is on hand whether pre-labeled or labeled on the master shipping container.** ~~Such records may be located at the retailer's point of distribution, warehouse, central offices or other off-site location.~~

(3) Any retailer handling a covered commodity that is found to be designated incorrectly as to country of origin and/or the method of production (wild and/or farm-raised), or for frozen fish and shellfish covered commodities caught or harvested before December 6, 2004, for the date of harvest, shall not be held liable for a violation of the Act by reason of the conduct of another if the retailer could not have been reasonably expected to have had knowledge of the violation.

## Conclusion

N.G.A. appreciates the openness and responsiveness of USDA representatives regarding the mandatory seafood country of origin guidelines. N.G.A. believes that the following changes to the IFR will benefit retail and wholesale grocers, USDA and ultimately consumers: (1) The timeline for compliance with the mandatory seafood COL rule should be delayed to be consistent with uniform effective dates for labeling changes by FSIS and FDA; (2) In the interest of giving consumers the most accurate country of origin and MOP information, covered seafood products should be labeled at the source; (3) USDA should eliminate the tracking and recordkeeping requirements by lot number or other unique identifier for wholesalers and other intermediary suppliers; and (4) USDA should only require retailers to maintain the country of origin and MOP information, (including the lot number(if USDA maintains the requirement)), that the supplier provides for so long as the product is on hand.

Sincerely,



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